

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 April 2005

Case No. 2005-ERA-10

In the Matter of

JAMES FECKLEY,

Complainant,

v.

FIRST ENERGY NUCLEAR
POWER OPERATING CO.,

Respondent.

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This proceeding arises under the provisions of the Energy Reorganization Act of 1974 (hereinafter ERA), as amended, 42 U.S.C. § 5851, and the implementing Regulations at 29 C.F.R. Part 24. On December 2, 2004, the Complainant, James Feckley, filed an ERA complaint with the Occupational Safety and Health Administration (hereinafter OSHA) of the United States Department of Labor, against the Respondent, First Energy Nuclear Power Operating Company. Following an investigation and determination by OSHA, a formal hearing was requested on February 23, 2005. A hearing is currently scheduled to commence on June 27, 2005 in Toledo, Ohio.

On March 30, 2005, the parties submitted a Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice (hereinafter Settlement Agreement). The undersigned must determine whether the terms of the Settlement Agreement, as submitted, are a fair, adequate, and reasonable settlement of the complaint. 29 C.F.R. §§ 24.6(f)(1), 24.7(a), 24.8(a); see also Hoffman v. Fuel Economy Contracting, 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) citing 42 U.S.C. § 5851(b)(2)(A).

The parties request that the Settlement Agreement be sealed and remain confidential pursuant to 29 C.F.R. § 70.26. This

confidentiality provision does not run afoul of the requirements of law. See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor, 85 F.3d 89 (2nd Cir. 1996); Bragg v. Houston Lighting & Power Co., 1994-ERA-38 (Sec'y June 19, 1995). However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. The Administrative Review Board (hereinafter ARB) noted:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. Southern California Edison Co., 1995-ERA-13 (ARB March 27, 1997).

The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

FINDINGS OF FACT

Upon review of Settlement Agreement, I make the following findings:

1. The Settlement Agreement is fair, adequate, and reasonable on its face, and it further appears that it effectuates the purposes and policies of the statute under which it arises;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits;
3. The Settlement Agreement is the entire and only settlement agreement between the parties arising from the factual circumstances that formed the basis for the claims under the ERA;

4. The parties are hereby deemed to have waived any further procedural steps and rights to challenge or contest the validity of this Decision and Order before the undersigned, as appropriate, regarding the matters, which are the subject of their Settlement Agreement.

RECOMMENDED ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Settlement Agreement is APPROVED, and the parties shall comply with the terms thereof;
2. This complaint is DISMISSED WITH PREJUDICE;
3. The hearing scheduled for June 27, 2005 in Toledo, Ohio is CANCELED; and,
4. The terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally, pursuant to 29 C.F.R. § 70.26.

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DANIEL J. ROKETENETZ
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210. Such petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge, Hon. John M. Vittone. See 29 C.F.R. §§ 24.7(d) and 24.8.